

### REMARKS

Claims 1, 3-10, and 12 are amended. Claims 2 and 13-20 are canceled. No claims are newly added. Accordingly, after entry of this Amendment, claims 1 and 3-12 will remain pending.

As a preliminary matter, the Applicant notes that an Information Disclosure Statement is being submitted together ("IDS") with this Amendment. Selected ones of the references were cited during the European Granting procedure for European Patent No. EP 1 702 174 B1, which corresponds to the present application: (1) EP 0 278 954 B1, (2) EP 0 343 157 B1, (3) EP 0 362 328 B1, (4) EP 0 598 867 B1 (which is the European counterpart to Wyssmann (U.S. Patent No. 5,741,275), to which the Examiner makes reference in the Office Action), (5) DE 35 32 335 A1, (6) DE 19 52 451 A1, and (7) DE 92 02 740 U1. Others of the references were cited during an opposition filed against European Patent No. EP 1 702 174: (8) DE 296 02 882 U1, (9) DE 298 19 715 U1, (10) DE 36 88 686 T2, (11) "Kunststoff Taschenbuch," Hans-Jurgen Saechtling, 24 August (Auflage), 1989, (pages 398, 399, 401, 568, 569), and (12) EP 0 826 128 B2.

In the Office Action, the Examiner rejected claim 12 under 35 U.S.C. § 112, second paragraph. In particular, the Examiner stated that the limitation "the breaking points" in line 12 lacks antecedent basis. In response, the Applicant has amended claim 12 so that it depends properly from claim 11. As a result of this change, "the breaking points" in claim 12 finds proper antecedent basis from claim 11. Accordingly, the Applicant respectfully requests that the Examiner withdraw the rejection.

In addition, the Examiner rejected claims 1-3, 5-10, and 13-20 under 35 U.S.C. § 103(a) as being unpatentable over Wyssmann (U.S. Patent No. 5,741,275) in view of Ahern (U.S. Patent Application Publication No. 2005/0037165) and Hutchinson (U.S. Patent No. 6,312,641). Claims 4 and 11-12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wyssmann, in view of Ahern and Hutchinson and Yeung (U.S. Patent No. 5,363,890).

Claims 1 and 2-12 are patentable distinguishable from the prior art, because the claims recite a device for deliberate, controllable delivery or drawing of a liquid or viscous substance that combines several features including, among them, a cylindrical reservoir with a wall including an inner layer, a central layer, and an outer layer, where the central layer has a lower diffusion coefficient for the gas to be generated by the gas generating cell than the inner and outer layers. Since the combination of features is not described or suggested by the

references relied upon by the Examiner, the Applicant respectfully submits that the claims are patentable over the prior art.

The first reference relied upon by the Examiner, Wyssmann, describes a device for intentional and controllable distribution of a liquid or viscous material. In particular, Wyssmann, describes a component 1 that is essentially a smooth cylindrical container with a bottom 11. (Wyssmann at col. 3, lines 54-59.) The cylindrical component 1 includes a piston 6 that divides the contents of the container into a compressed gas chamber 4 and a mass chamber 5. (Wyssmann at col. 4, lines 4-12.) As noted by the Examiner, Wyssmann does not discuss or suggest any materials from which the walls of the container are made. The Examiner places reliance upon Ahern et al. to supply this teaching.

Ahern et al. describes a multilayer container and process for forming the multilayer container. Ahern et al. describes a plastic tube 10 with multiple polymeric layers without mixed interfacial regions. (Ahern et al. at paragraph [0025].) Three layers forming a skin-core-skin arrangement are described, with the inner and outer layers surrounding the central layer. (Ahern et al. at paragraph [0025].) The skin layers are made from one material while the central layer is another material. (Ahern et al. at paragraph [0025].) Materials used to construct the plastic tube 10 include those that inhibit gas and liquid permeability. (Ahern et al. at paragraph [0026].)

Ahern et al. discusses that the core layer (e.g., cyclic olefin copolymers ("COC") or polypropylene "PP") may provide a liquid vapor barrier while the skin layer (e.g., ethylene vinyl alcohol copolymers ("EVOH") or polyester) provides a gas barrier. (Ahern et al. at paragraph [0032].) Ahern et al. states that the proportion of the skin thickness to the core thickness may be any suitable value that provides desired properties. (Ahern et al. at paragraph [0032].)

In fashioning the rejection of the claims, the Examiner stated that the core layer of EVOH provides a gas barrier with a lower diffusion coefficient than the skin layers. The Applicant, however, respectfully submits that Ahern et al. describes the skin layers as being made from EVOH. (Ahern et al. at paragraph [0032].) It is noted that the central layer in the construction of the present invention may be made from EVOH, thereby indicating a different construction than that described by Ahern et al.

In addition, Ahern et al. does not describe the core (or central) layer as having a lower coefficient for gas diffusion than the skin layers. Moreover, there is nothing in Ahern et al. that provides any motivation to create a plastic tube with layers where the central layer has a

lower coefficient for gas diffusion than the inner and outer layers. Ahern et al. merely states that the materials may be selected to provide a vapor and gas barrier. The reference is silent, however, as to the relative gas permeability of one layer with respect to another.

In addition, the Applicant respectfully points out that the device in Ahern et al. is a plastic tube that excludes features such as a piston, a gas chamber, and a storage chamber, among others. There is nothing in Ahern et al. that would motivate those skilled in the art to combine the plastic tube described by Ahern et al. with the device described by Wyssmann. As a result, the combination of Ahern et al. would not be considered by those skilled in the art.

In rejecting the claims, the Examiner relied upon Hutchinson for the concept of a multilayer wall that is transparent. With reference to Fig. 7, Hutchinson describes a preform for forming a container that has an interior layer 32 of virgin polyethylene terephthalate, a barrier layer 34, and an outer layer 35 of recycled polyethylene terephthalate. (Hutchinson at col. 8, lines 58-67.) The barrier layer 34 may be terephthalic acid, isophthalic acid copolyester, with the barrier layer 34 being of a substantially smaller thickness than both polyethylene terephthalate layers 32, 35. (Hutchinson at col. 9, lines 4-9.) The barrier layer 34 may be made from a material with low permeability to gases such as air and carbon dioxide. (Hutchinson at col. 4, lines 60-65.) Since the container is intended for beverages, it is understood that the container is transparent.

Hutchinson does not describe many of the features lacking from Ahern et al. Specifically, there is not discussion or suggestion of a construction for a container that includes a piston to divide the container into separate chambers. Moreover, there is no suggestion to combine the container described in Hutchinson with the disclosures in Ahern et al. or Wyssmann to arrive at the present invention.

At least for these reasons, therefore, the Applicant respectfully submits that the combination of Wyssmann, Ahern et al., and Hutchinson does not render obvious any of claims 1-3, 5-10, or 13-20.

Concerning claims 4 and 11-12, the Examiner relied upon Yeung for the teaching of a membrane closure. Yeung describes a nonspill bottled water replacement system. Despite a generic discussion of a closure, there is nothing in Yeung that addresses the deficiencies of the references previously discussed. As such, the combination of Yeung with the other references does not assist the Examiner with a rejection of the claims in the present patent application.

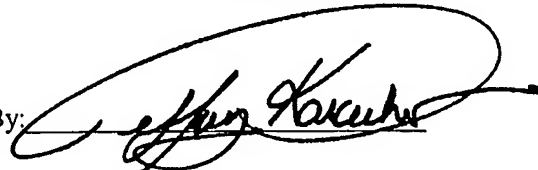
For the reasons set forth above, the Applicant respectfully submits that claims 1 and 3-12 are patentably distinguishable from the prior art. As such, the Applicant respectfully requests that the Examiner withdraw the rejections of the claims and pass this application quickly to issuance.

If there are any fees required for this submission that are not otherwise accounted for, please charge Deposit Account No. 02-1010. In addition, please credit any overpayments to the same Deposit Account.

Respectfully submitted,

BARNES & THORNBURG LLP

By:

A handwritten signature in black ink, appearing to read "Jeffrey D. Karceski", is written over a horizontal line. The signature is stylized with a large, sweeping loop at the end.

Date: **March 2, 2009**  
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